(2)

No. 06-1185

IN THE

SUPREME COURT OF THE UNITED STATES

RONNIE MICKENS

Petitioners

v.

POLK COUNTY SCHOOL BOARD,
GLENN RENOLDS
et al.,

Respondents

Petition for a rehearing for a Writ of Certiorari to the
United States Court of Appeals
Eleventh Circuit

PETITION FOR REHEARING WRIT OF CERTIORARI

PRO SE
RONNIE MICKENS
6420 Odom Road
LAKELAND, FLORIDA 33809
(863)853-5991

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eleventh Circuit Court of Appeals has entered decisions in this case that conflict with it's previous decisions, the decisions of all other United States Courts of Appeals and the Supreme Court on the same important matter, and has departed from the accepted and required course of judicial proceedings as to call for an exercise of the Supreme Court's supervisory power.

2. Whether a post-deprivation/termination, malicious prosecution administrative hearing" adequately remedied the Respondents violations of Petitioner's substantive, procedural and stigmatization due process rights, equal protection rights, first amendment rights, Title VII race and retaliation discrimination rights, ADA perceived disability discrimination rights, ADA medical and psychological tests discrimination rights, Section 1985 (3) conspiracy rights, Section 1981 breach of contract rights and malicious prosecution rights.

3. Whether a post-termination, malicious prosecution administrative hearing" is all that the Due Process and Equal Protection Clause requires.

4. Whether the "unconstitutionally in-adequate, three years substantially delayed, post-deprivation, malicious prosecution administrative hearing" was conducted at a meaningful time and provided a meaningful opportunity to prevent mistaken, un-justified and wrongful termination.

5. Whether Petitioner's pre-termination constitutional and civil rights claims and causes of action are viable, relevant, material, related, inter-related, inter-dependent, intertwined and inextricably tied together.

6. Whether the District Court and the Eleventh Circuit of Appeals fundamentally erred when they misapprehended that Petitioners substantive, procedural, and stigmatization due process, equal protection of the laws, first amendment, Title VII race and retaliation discrimination, ADA perceived

disability discrimination, ADA medical and psychological tests discrimination, malicious prosecution and conspiracy claims and causes of action were merit-less.

7. Whether the District Court and the Eleventh Circuit of Appeals deprived Petitioner of due process, equal protection of the laws, a full, fair and impartial jury trial, a fair and impartial judge and adequate representation.

8. Whether the Eleventh Circuit Court of Appeals erred when it failed to review the District Court Judge's post-final judgment as a matter of law that overturned the favorable jury's verdict, $300,000.00 award, the final judgment entered on Petitioner's ADA psychological examination claim.

LIST OF PARTIES' JUDGMENTS SOUGHT TO BE REVIEWED

The School Board of Polk County, Florida

Glenn Reynolds

Carolyn Baldwin

Eileen Killebrew

William Londeree

Dennis Dunn

Ron Rizer

Steve Selph

Donald Wilson

LIST OF PARENT OR PUBLICLY HELD COMPANY

The Polk County School Board, Polk County Florida

TABLE OF CONTENTS **PAGE**

QUESTIONS PRESENTED.....i

PARTIES TO PRECEEDINGS.....iv

TABLE OF CONTENTS.....v

TABLE OF AUTHORITES.....vi

JURISDICTION.....1

STATUTORY PROVISISIONS INVOLVED.....1

STATEMENT OF THE CASE.....2

ARGUMENTS I-VIII.....3

CONCLUSION.....10

CERTIFICATE

TABLE OF AUTHORITIES PAGE

Arrington v. Helms,
438 F. 3d 1336, 1347 (11th Cir. 2006).....5

Barry v. Barchi,
99 S. Ct. 2642.....4

Bell v. Burson,
91 S. Ct. 1586 (1971).....5

Board of Regents v. Roth,
408 U.S. 564.....4

Boddie v. Connecticutt,
91 s. Ct. 780, (1971).....5

Buxton v. City of Plant City,
871 F.3d 1037, 1042-43 (11th Cir. 1989).....6

Cleveland Bd. of Edu. v. Loudermill,
105 S. Ct. 1487 (1985), 94 S. Ct. 1677.....5,9

Draper v. Reynolds,
369 F.3d 1270, 1278 n. 14 (11th Cir.).....7

E.G. Armstrong v. Mamzo,
85 S. Ct. 1187, 1191.....4

Goss v. Lopez,
95 S. Ct. 729.....4

Mulane v. Central Hanover Bank & Trust Co.,.....4
70 S. Ct. 652, 656 (1950).....

Tinker v. Beasley,
429 F.3d 1324, 1328-29 11th Cir. 2005).....6

Florida Statutes, Chapter 231, 120 and 286.....1,8

U.S. Const. Amend. XIV, Section 1.....6

U.S.C.A. Const. Amends. 5, 14.....8

JURISDICTIONAL STATEMENT

Jurisdiction is based on a United States Court of Appeals that has entered decisions in conflict with the decisions of all other United States Court of Appeals on the same important matter and has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. The dates of the orders that Petitioner is seeking to be review are August 1, 2001, May 1, 2002, May 9, 2002, May 17, 2002, July 23, 2002, August 14, 2002, **February 10, 2003**, July 25, 2003, November 14, 2003, June 23, 2004, October 14, 2005, October 27, 2005, April 5, 2006, September 14, 2006 and December 3, 2006.

STATUTORY PROVISIONS INVOLVED

Florida Statutes, Section 231.36(6) provides for Petitioner's constitutional guaranteed pre-termination substantive, procedural and stigmatization due process and equal protection of the laws rights. Florida Statutes, Chapter

231, the Florida Constitution and the XIV Amendment Due Process and Equal Protection Clauses requires a pre-termination administrative hearing in this case sub-judice, not a ineffective/inadequate post-termination malicious prosecution administrative hearing.

STATEMENT OF THE CASE AND FACTS

The Polk County School Board had the authority to dismiss Petitioner Mickens pursuant to the notice, hearing and just cause procedures set forth in Florida Statutes, Section 231.36 (6). The Polk County School Board altogether failed to follow the required pre-termination notice, hearing and just cause due process procedures.

On September 9, 1997, Respondent Polk County School Board arbitrarily, capriciously and pre-textually terminated and stigmatized Petitioner Mickens based on a vague legal non-existent factual allegation . The Polk County School Board failed completely to establish by a preponderance of the evidence that Petitioner

Mickens committed misconduct in office. The Polk County School Board and it's administrators' "**procedural derelictions in this case were manifold and egregious and that "an uninterrupted sequence of abuse [was] visited upon Petitioner Mickens by the administrators of the Polk County School Board…"**

The "unconstitutionally inadequate three years substantially delayed, post-deprivation/termination, malicious prosecution administrative hearing's" findings of fact and conclusions of law supported, substantiated and confirmed Petitioner's allegations that Respondents violated Petitioner's constitutional and civil rights.

ARGUMENT I-VIII

THE DISTRICT COURT AND THE ELEVENTH CIRCUIT COURT DECISIONS IN THIS CASE CONFLICT WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT AND WITH THE AUTHORITES' DECISIONS OF EVERY OTHER DISTRICT AND UNITED STATES COURT OF APPEALS THAT HAS ADDRESSED THESE ISSUES.

The District Court and the Eleventh Circuit decisions

conflict with the below Supreme Court decisions, and with the authorities' decisions of every other District and United States Court of Appeals that has addressed these issues:

"When interests involving "liberty" and "property" rights protected by the Fourteenth Amendment are implicated, the right to some kind of prior hearing is paramount." "The due process clause provides that certain substantive rights—life, liberty and property – cannot be deprived except pursuant to constitutional adequate procedures." Cleveland Bd. Of Educ. v. Loudermill, 105 S. Ct. 1487 (1985); Board of Regents v. Roth, 92 S. Ct. 2701.

"The opportunity to present reasons why proposed action should not be taken is a fundamental due process requirement." Mullane v. Central Hanover Bank & Trust Co., 70 S. Ct. 652, 656, (1950).

"A state employee who under state law, or rules promulgated by state officials, has a legitimate claim of entitlement to continued employment absent sufficient cause for discharge may demand the procedural protection of due process." Gross v. Lopez, 95 S, Ct. 729.

"Once a court finds a due process violation in the denial of pre-termination notice, hearing and just cause the district court need not and should not consider whether the post-termination procedures were adequate." Barry v. Barchi, 99 S. Ct. 2642, 2653-2654.

"The due process clause requires provisions of a hearing "at a meaningful time." E.G. Armstrong v. Mamzo, 85 S. Ct. 1187, 1191.

"The Supreme Court has described "the root requirement of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property and liberty interest." Boddie v. Connecticutt, 91 S. Ct. 780, (1971); Bell v. Burson, 91 S. Ct. 1586 (1971).

The Due Process Clause of the Fourteenth Amendment provides that no state "shall deprive any person of life, liberty or property, without due process of law." U.S. Const. Amend. XIV, Section 1. "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." **Arrington v. Helms,** 438 F.3d 1336, 1347 (11th Cir. 2006). Thus a claim alleging the denial of procedural due process, under 42 U.S.C. Section 1983, requires proof of three elements: "(1) a deprivation of a protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." Thus a claim alleging denial of substantive due process, under 42 U.S.C. Section 1983, requires proof of the violation of a

constitutional/fundamental right. The Respondents arbitrarily, capriciously and pre-textually deprived Petitioner of his life, liberty and property interests in his employment without procedural due process, equal protection of the laws and without freedom of speech and association. **See Tinker v. Beasley, 429 F.3d 1324, 1328-29 (11th Cir. 2005).** In order to established that a deprivation of a public employee's liberty interest has occurred without due process of law, the employer must prove that: (1) a false statement (2) of a stigmatizing nature (3) attending a governmental employee's discharge (4) was made public (5) by the government employer (6) without a meaningful opportunity for employee name clearing. **Buxton v. City of Plant City, 871 F.2d 1037, 1042-43 (11th Cir. 1989).** The Equal Protection Clause mandate that the government treat similarly situated individuals alike. U.S. Const. Amend. XIV Section I. To state a Section 1983 equal protection claim, Petitioner Mickens (1) alleged that, through state action, similarly

situated persons outside of his protected class have been treated disparately or different," and (2) "put forth evidence that the Respondents were motivated by race, hate and other unlawful factors. **See Draper v. Reynolds, 369 F.3d 1270, 1278 n. 14 (11th Cir.)** Unlike Petitioner Mickens, the Respondents afforded notice, hearing and just cause before they disciplined or terminated similarly situated employees such as Stephen Anderson, James P. Austin, Rita Berger, Patrick Coughlin, Richard Meeks, Stephen Osthoff, Steve J. Partain, Richard Pierson, James Sinclair, E. L. Snipes, Lisa Larrango, Jerry Linder, Eillen Killebrew and other principal and assistant principal outside of Petitioner protected class. Unlike the above employees, Petitioner Mickens was required without legal authority or a factual basis by the Respondents to take medical and psychological tests under fraudulent conditions.Under color of law, the District Court and the Eleventh Circuit Court fundamentally erred when they decided that Petitioner's Mickens success in the

"unconstitutionally in-adequate, three years substantially delayed, post-termination/deprivation, malicious prosecution administrative hearing" rendered merit-less or frivolous, Petitioner's 42 U.S.C. Section 1983 substantive, procedural, stigmatization procedural due process, equal protection, first amendment/retaliation claims, Title VII race and retaliation discrimination, ADA perceived disability discrimination, ADA medical test and psychological test discrimination claims, Section 1985(3) conspiracy claim, Section 1981 breach of contract claim and malicious prosecution claim. The "unconstitutionally in-adequate, three years substantially delayed, post-deprivation/termination, malicious prosecution administrative hearing" was used by the lower courts as if it exonerated the respondents. The hearing confirmed and affirmed Respondents violations of Petitioner's rights provided and protected by Florida Statutes, Sections 231.36(6) and U.S.C.A. Const. Amends. 5, 14. The lower courts erroneously granted the wrongdoers, Summary

Judgments and/or Judgments As A Matter of Law.

Under color of law, the lower courts misused the "unconstitutionally in-adequate, three years substantially delayed, post-deprivation/termination, malicious prosecution administrative hearing" as a pretext to deprive Petitioner Mickens of a full, fair and impartial jury trial, adequate representation, compensatory and punitive damages, damages for economic and non-economic losses, adequate back-pay, front-pay, attorney fees and cost, re-instatement, expungement of stigmatizing letters from Petitioner's personnel file, clearing of Petitioner's good name and reputation in the community.

"The Supreme Court convincingly demonstrated that the employee's right to fair notice and an opportunity to present his side of the story before discharge is not a matter of legislative grace, but of constitutional guarantee," **Cleveland Bd. Of Educ. v. Loudermill,** 105 S. Ct. 1487 (1985).

"[t]he substitution of a meager grant for a regular paycheck may bring with it painful and irremediable personal dislocations. A child education may be interrupted, a family home lost, a person's relationship with his friends and even his family may be irrevocably affected. The costs of being forced, even temporarily, unto the welfare rolls because of a wrongful discharge from tenured Government employment cannot be so easily discounted," id., at 221, 94 S. Ct., at 1677.

CONCLUSION

The fact that Petitioner Mickens has been arbitrarily, capriciously and pre-textually deprived of his livli-hood, liberty and property interests based on race is not false, immaterial or merit-less. Petitioner Mickens constitutional guaranteed rights to pre-termination notice, hearing and just cause were paramount and essential to prevent his wrongful termination and stigmatization. The above applicable constitutional, common and state laws require the entry of a final judgment as a matter of law in Petitioner's favor.

Respectfully Submitted,

Ronnie Mickens
6420 Odom Road
Lakeland, Florida 33809
(863) 853-5991

CERTIFICATE

I, Petitioner Ronnie Mickens certify that this petition for rehearing is restricted to the grounds specified in Rule 44 paragraph 2 and that it is presented in good faith and not for delay.

Ronnie Mickens
6420 Odom Road
Lakeland, Florida 33809
(863)853-5991